

(2016) 04 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : CWP No.13204 of 2015 (O&M)

Sewa Singh and another

APPELLANT

Vs

Director, Rural Development and Panchayats Department,
Punjab and others

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11
Waqf Act, 1995 — Section 83

Citation : (2016) 2 LawHerald 1749 : (2017) 1 PLJ 63 : (2016) 3 RCRCivil 184

Hon'ble Judges : Surya Kant;P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : Rajesh Bhardwaj, Addl. AG Punjab, Umesh K. Kanwal, Advocate,
Gulam Nabi Malik, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J. (Oral) - The petitioners seek quashing of the orders dated 21.06.2011 and 18.03.2015 (P6 and P8) passed by the Collector and the Appellate Authority, respectively, under the Punjab Village Common Land (Regulations) Act, 1961. Vide the first order, the Collector dismissed the petition filed by petitioners under Sections 11 of the Act seeking declaration of their ownership with possession of the land measuring 52 kanal 11 marla situated within the revenue estate of Village Kalyana, Tehsil Nabha, District Patiala fully described in the headnote of the petition and vide the second order, the appellate authority has dismissed their appeal, affirming the order of the Collector.

2. The facts may be noticed briefly. The petitioners while claiming themselves to be proprietors of village Kalyana, Tehsil Nabha Tehsil Patiala, asserted their possession of the suit land from the year 1930 onwards i.e. since the time of their forefathers. According to them, the subject land is owned by shamlat deh hasab rasad rakba khewat and as per jamabandi for the year 1946-47 and in the

column of possession, makbuja malkan i.e. the proprietary body is recorded in its possession. They further averred that mutation of ownership was illegally changed by the Assistant Collector 2nd Grade in favour of Nagar Panchayat vide mutation No.322 purportedly in compliance of the order dated 15.06.1955 passed by the Deputy Commissioner, Patiala who had no such power to direct the change of mutation. They further averred that entry in the column of ownership was further sanctioned vide mutation No.589 in favour of Punjab Wakf Board - respondent No.4 on 18.04.1978 on the strength of the notification dated 29.05.1971 published in the Gazette of Government of India. The petitioners thus while questioning both the mutations further claimed that the subject land is owned by the proprietary body of the village and they were also in possession of a part of it as per their share being proprietors of the village.

3. Respondent No.2 - Gram Panchayat contested the claim of petitioners and maintained that the suit land is actually owned by it and that the mutation sanctioned in favour of Punjab Wakf Board was totally illegal as there is no Muslim community in the village nor the suit land was ever used for any purpose of Muslim community. The claim of the petitioners that they were in cultivating possession of suit land since 1930 was disputed.

4. The Punjab Wakf Board also filed a separate written statement claiming that the mutation of property in favour of Wakf Board is correct as the subject land is a Wakf property as per notification issued by Government of India. The Wakf Board further averred that "it is wrong that the suit property has been improved by the petitioners or their fore-fathers in any manner. It is also wrong that they remain in possession of the same. The petitioners have recently encroached upon the suit property".

5. It thus emerges out that the Gram Panchayat as well as Wakf Board disputed the ownership and possessory claim of the petitioners over the suit land.

6. It may be briefly noticed at this stage that in respect of title dispute between a Gram Panchayat or proprietors of a village where the question as to whether or not it is shamlat/Gram Panchayat land arises for consideration, the jurisdiction of the Civil Court has been expressly barred under Section 13 of the Act and the power to adjudicate such like disputes has been vested with the Collector.

7. The Collector, Patiala vide impugned order dated 21.06.2011 held that as per the revenue record maintained before the Consolidation, the land in dispute was shamlat deh and during consolidation proceedings also, this land was transferred in the name of Gram Panchayat vide mutation No.322. He further held that the Gram Panchayat was in possession and has been using the subject-land for common purposes. The petitioners' claim regarding possession over the suit land since 1930 was belied by the Collector on the basis of entries in the revenue record as it was first time in the jamabandi for the year 1977-78 that their forefather Virsa Singh was shown to be in possession of khasra No.84 and 85 total measuring 32 kanal. Except that there has been no entry in the revenue

record depicting possession of their forefathers. The petitioners having failed to establish their possession over the suit land on or before 26.01.1950 and that too as per their respective shares, the Collector dismissed their petition.

8. The aggrieved petitioners preferred appeal which has also been turned down by the Appellate Authority on 18.03.2015 reiterating the conclusions drawn by Collector. In addition, the Appellate Authority held that in the revenue record the nature of the land is shown as banjar kadim which was obviously not cultivable land hence the very claim of the petitioners that they have been in cultivating possession of the suit land since 1930 was not factually correct. The Appellate Authority further held that the Mutation of the suit land was firstly changed in favour of Nagar Panchayat on 16.02.1959 it was further changed in the name of Punjab Wakf Board in the year 1978. The petitioners took no action for cancellation of these mutations. Hence their claim, at this belated stage, was otherwise not maintainable.

9. Still aggrieved, the petitioners have approached this Court.

10. The record reveal that when this case came up for preliminary hearing on 08.07.2015, a coordinate Bench passed the following order:-

"The petitioners filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred to as "the Act"), claiming that the land in dispute is not "shamlat deh" by asserting the cultivating possession of their predecessors before 26.01.1950. The petitioners also arrayed the Punjab Wakf Board as a respondent and while alleging that the petitioners are owners, also alleged that land belongs to the Wakf Board which has created a tenancy in their favour.

We have perused the revenue record and are satisfied that as jamabandi before 26.01.1950 records the land as "banjar kadim", the petitioners have not been able to prove their cultivating possession, prior to 26.01.1950. As regards the mutation recorded in the name of the Wakf Board, we are unable to discern any material to support the mutation, but as a tenancy has been created by the Wakf Board in favour of the petitioners and as there may be a dispute regarding title between the Gram Panchayat (respondent No.2) and Punjab Wakf Board (respondent No.4), issue notice of motion for 27.07.2015."

(emphasis applied)

11. It may thus be seen that the petitioners' claim of ownership with possession over the suit land since the year 1930 has already been discarded by this Court at the limine stage keeping in view the consistent entries in the revenue record which do not support such their claim coupled with the fact that the land is shown as banjar kadim and could not be in cultivating possession.

12. It is further interesting to note that the petitioners have apparently changed their stance before this Court by claiming to be tenants under the Wakf Board. Contrarily, the contents of their petition (P2) would show that they have not only

questioned the legality of mutation No.589 but have also denied the title, interest or right of the Wakf Board in the suit land. Having denied the very title of the Wakf Board, the petitioners cannot turn around and plea tenancy under the Board.

13. As regard to the dispute between Gram Panchayat and Wakf Board, though we have heard their learned counsel briefly with reference thereto but are of the view that this Court in exercise of writ jurisdiction need not to travel into such like disputed issues more-so when the title dispute between the Gram Panchayat and the Wakf Board can be effectively adjudicated by the Tribunal constituted under Section 83 of the Wakf Act, 1995.

14. Since the moot question before the Collector and the appellate authority under the 1961 Act was only with reference to the petitioners' ownership claim, it is held that the Wakf Board shall be at liberty to initiate appropriate proceedings, if it has any claim qua the suit land, before the Tribunal and/or any other appropriate forum. Suffice to say it that the Wakf Board cannot be permitted to seek declaration of its title qua the subject land, in these proceedings in which the Board has been arrayed as a respondent only.

15. With liberty afore-mentioned to the Board, we do not find any merit in this writ petition.

16. Dismissed.